



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201131035

Uniform Issue List: 408.03-00

MAY 11 2011

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XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Legend:

T:EP:RA:TY

Taxpayer A = XXXXXXXXXXXXXXXXXXXX

Individual B = XXXXXXXXXXXXXXXXXXXX

Financial Institution L = XXXXXXXXXXXXXXXXXXXX

Company M =XXXXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Account Y = XXXXXXXXXXXXXXXXXXXX

Amount A = XXXXXXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXX:

This letter is in response to your request dated September 15, 2010, as supplemented by correspondence dated December 13, 2010, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 85, represents that she received a distribution totaling Amount A from IRA X. Taxpayer A asserts that her failure to accomplish a rollover of Amount A within the 60-day period prescribed by section 408(d)(3) was due to an error made by Financial Institution L. Taxpayer A represents that Amount A has not been used for any other purpose.

Taxpayer A represents that on Date 1, acting on the advice of Individual B, her investment adviser and principal of Financial Institution L, she closed IRA X with Company M, intending to roll over the distribution to a new IRA with Financial Institution L. Taxpayer A asserts that she communicated to Individual B, her intention to rollover Amount A to an IRA. Taxpayer A received the distribution proceeds on Date 1 and mailed the check to Financial Institution L where it was received on Date 2. Individual B directed an employee of Financial Institution L to rollover Amount A into an IRA account. Instead Amount A was deposited into Account Y, a regular brokerage account maintained at Financial Institution L. Taxpayer A asserts that she was not aware of this error until Date 3. Documentation submitted indicates that a representative of Financial Institution L incorrectly deposited Amount A to Account Y, a non-IRA account.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount A from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by an error made by Financial Institution L, which resulted in Amount A being deposited into a non-IRA account.

Therefore, pursuant to section 408(d)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A, from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount A to a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of any amounts that are required to be distributed by section 401(a)(9) of the Code.

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Page 4

201131035

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact XXXXXXXX (ID XXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely,

  
for Ada Perry  
Laura B. Warshawsky, Manager  
Employee Plans, Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose